IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Crl.Rev.Pet.No. 4011 of 2006()

CRA.471/2005 of ADDL. SESSIONS COURT, ALAPPUZHA
CC.1002/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

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REVN. PETITIONER: APPELLANT/ACCUSED

MATHEW CYRIAC, S/O. KURIAKOSE,
AGED 46 YEARS, CHENNOTH KARIYIL HOUSE,
KOKKOTHAMANGALAM P.O., CHERTHALA.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. S.SURESH, S/O. SUKUMARAN,
HARIMANGALAM FROM MADATHIVELIYIL,
C.M.C.-20, CHERTHALA P.O.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

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CRL.R.P. No. 4011 of 2006

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Dated this the 20th day of November, 2006

O R D E R

The petitioner herein, who is the accused in C.C.No.1002/2002 on the file of the Court of the Judicial Magistrate of the First Class-I, Cherthala, was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act. He was sentenced to undergo simple imprisonment for one month and was directed to pay compensation of Rs.1,50,000/- under Section 357(3) Cr.P.C., and in default of payment of compensation, to undergo simple imprisonment for 15 days. The petitioner challenged the conviction and sentence in an appeal. The appellate court confirmed the conviction and sentence.

2. The case of the complainant is that himself and the accused are friends and on 28/07/2000 the accused demanded a sum of Rs.1,50,000/- as loan. The amount was given and the accused issued Exhibit P1 cheque. On presentation of the cheque after the time within which the accused undertook to make available the funds with the bank, the cheque was dishonoured, for insufficiency of funds. Exhibit P4 notice was issued to the accused

after dishonour of the cheque. The notice was accepted by him. Accused sent Exhibit P8 reply.

3. The case of the accused is that from 1990 onwards, he was doing business at Thalayolaparambu, and he was residing there till 1999. After 1999, he shifted his business to Ernakulam, and was residing there permanently. There was no occasion for him to reside at Cherthala, after 1999, and there was no occasion to issue the cheque in question. It was contended that the signature in Exhibit P1 cheque is not that of the accused and that he does not know how the cheque happened to come into the possession of the complainant. The complainant was examined as PW.1. On the side of the accused, DW.1 Chacko, a neighbour of the accused was examined. The trial court held that the evidence of DW.1 reveals that there is no consistent case for the accused. The further case put forward by the accused is that the complainant and the brother of the accused were friends and later there arose a dispute between them and the present complaint is filed as a result of that dispute. This contention was not accepted by the trial court. The trial court took note of the fact that in the vakalath filed by the accused, his residential address in Cherthala is given. It was also noted that

Exhibit P8 discloses a different reason suggested by the accused as a reason for filing the complaint. It has also come out in evidence that the brother of the accused is not in good terms with the accused and, therefore, the suggestion made to PW.1 on behalf of the accused cannot be believed of. The trial court came to the conclusion that the accused has not discharged the burden of proof cast on him, and he has not rebutted the presumption under Section 139 of the Negotiable Instruments Act. On an analysis of the oral evidence and on comparison of the admitted and disputed signatures, the court below came to a conclusion that Exhibit P1 cheque was issued by the accused to the complainant. The appellate court, on evaluation of evidence, concurred the view taken by the court. The Appellate Court held that all the ingredients under Section 138 of the Act stand established. The Appellate Court also ventured to compare the admitted and disputed signatures of the accused and came to a conclusion that Exhibit P1 cheque was signed by the accused. No grounds are made out for interference under Section 397 Cr.P.C. There is no error, illegality or impropriety in the judgments and proceedings of the courts below. Therefore, the conviction of the petitioner-

accused, under Section 138 of the Act, is confirmed.

4. As regards the sentence, taking into account the facts and circumstances of the case, I am of the view that sentence of imprisonment till the rising of the court would be adequate, particularly, when there is a direction to pay compensation under Section 357(3) Cr.P.C. Accordingly, Criminal Revision Petition is partly allowed and the sentence of imprisonment for a period of one month is reduced to sentence of imprisonment till the rising of the court. The direction to pay compensation and the default sentence thereunder is also confirmed. However, the petitioner is granted three months' time to pay the compensation amount. The petitioner shall appear before the trial court on 18/12/2006 to suffer the imprisonment till the rising of the court and shall continue to appear as and when directed by the court, till the compensation is paid.

Crl.R.P is allowed in part, as indicated above.

(K.T.SANKARAN)
Judge

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